

Commitments for Failure to Pay Fines

Directive #10-70
Directive #10A-70
Issued by:

April 1, 1971
April 8, 1971
Edward B. McConnell

The Supreme Court of the United States in the case of *Tate v. Short*, 401 U.S. 395 (1971), decided on March 2, 1971, held it a denial of equal protection to limit punishment to payment of a fine for those who are able to pay it but to controvert the fine to imprisonment for those who are unable to pay it.

The response to this opinion in the various counties has not been uniform and accordingly the Supreme Court has authorized me to issue this directive.

1. If it is determined that the defendant has the present ability to pay the fine but voluntarily refuses to do so, the defendant may be committed. If, however, it is determined that the defendant does not have the present ability to pay the fine he or she should be released from jail, but may be ordered to pay the fine in installments if it is determined that he or she has the ability to so pay.
2. If the conviction is in and the fine imposed in the Superior Court, it is recommended that any installment payments be ordered made through the County Probation Department; if the conviction is in and the fine imposed in the Municipal Court, it is recommended that any installment payments be ordered made through the Municipal Court Administrator.
3. No commitments should be made for failure to pay a fine, unless a determination has been made that the defendant has the present ability to pay the fine but refuses to do so.
4. The Assignment Judges are requested, not only to see that appropriate action is taken promptly with regard to all defendants committed by the Superior Court in their county or counties, but also to follow-up to make certain that appropriate action is taken promptly by all Municipal Courts within their county or counties.

Your attention is also directed specially to the guidelines set forth in *State v. DeBonis*, 58 N.J. 182, 199-200 (1971). The following additional comments are submitted for your guidance:

1. The guidelines set forth in the opinion are not limited to fines imposed for motor vehicle violations but are applicable to all cases where the sentence is or includes a fine.
It is requested that you take such steps as you may consider necessary to insure compliance with these guidelines as applied to sentences heretofore or hereafter imposed at the county level, and that you also make certain necessary action is taken by all Municipal Courts within your county or counties.

EDITOR-S NOTE

The official citations for *Tate v. Short*, 401 U.S. 395 (1971), and for *State v. DeBonis*, 58 N.J. 182 (1971), have been added.

In numbered paragraph 1, the first sentence has been deleted because it dealt with the procedure

for handling defendants who had been committed for nonpayment of a fine prior to the Supreme Court opinion in *Tate v. Short*. The remaining sentences of that paragraph have been edited so as to delete all reference to retrospective application of the opinion.

In numbered paragraph 2, the present tense of the verb has replaced the past tense so as to make the instructions current. The reference to the County Court has been deleted. The term Municipal Court Administrator has replaced clerk of the Municipal Court.

In numbered paragraph 3, the reference to future application of the directive has been deleted.

In numbered paragraph 4, the first sentence describing arrangements for distribution and a reference to the former County Courts has been deleted.

The fifth paragraph has been deleted in its entirety because it refers to matters pending before the Supreme Court of New Jersey.

All of the paragraphs have been edited to make them timely. References to retrospective or prospective application or to the anticipated forwarding of memoranda have been deleted as well as all references to matters pending before the Supreme Court of New Jersey in 1971.